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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,251	08/10/2001	Kevin J. Zwaert	MBHB 00-556-A	5656

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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/928,251	<b>Applicant(s)</b> ZWAERT ET AL.	
	<b>Examiner</b> David J. Walczak	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 18-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 7 and 11-17 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As discussed in the previous Office Action, in regard to claim 7, an antecedent basis for "the annular wall first end" should be defined. In regard to claims 11 and 13, as discussed in the previous office action, the cap first open end 70 does not include the claimed structure. It is the cap second open end 68 that includes an annular wall 71 with threads 72 (see page 10, lines 24-25). It appears that on line one of claim 11, Line 13 of claim 13, "first open end" should be --second open end--. It is noted that this rejection has not been addressed in either the 2/24/04 or the 4/9/04 responses.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7-16 remain rejected under 35 U.S.C. 102(b) as being anticipated by Coombs. In regard to claim 1, Coombs discloses a liquid applicator comprised of a resilient bottle 12 capable of returning to its original form after being squeezed and

adapted to hold a liquid and having an opening, a pin 30 having first and second openings and at least partially surrounding the bottle wherein the bottle opening is concentric to the pin second opening, a cap 13 including first and second open ends wherein the open ends are arranged as claimed and an applicator holder 11. In regard to claims 2 and 3, Coombs discloses a roller applicator 21 positioned adjacent to the cap open end. In regard to claims 4 and 5, the bottle includes a threaded neck 33 between the hollow body and the opening thereof wherein the threaded neck engages a threaded inner surface of the pin. In regard to claims 7 and 8, the pin includes an annular wall having threads 32 thereon which mate with the threaded neck of the bottle and a shoulder (located beneath the threads 32, see Figure 3) dividing the first and second openings. In regard to claims 9 and 10, the Coombs device includes a plug 35 "associated" with the pin openings and having an outer diameter smaller than the diameter of the cap second open end. In regard to claims 11 and 12, the cap includes a threaded annular wall 29 which receives the threaded neck 31 of the pin. In regard to claims 13-15, as discussed supra, the Coombs device includes the claimed structure. In regard to claim 16, the bottle has an opening that is "large enough to allow the resilient bottle to be filled".

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coobs. Although the Coombs reference does not disclose the specific material used to make the pin or the dimensions of the bottle opening, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the pin can be made of any suitable material, including a rigid plastic and the bottle opening can be of any suitable size, including the claimed size, without effecting the overall operation of the device.

### ***Response to Arguments***

Applicant's arguments filed 4/9/04 have been fully considered but they are not persuasive. The Applicant contends that the Coombs reference is not applicable against amended claims 1 and 13 in that the container, since it is rolled upon itself when being emptied, is not capable of returning to its original form after being squeezed. The Examiner contends, however, that the container is "capable" of returning to its original form after being squeezed. Since the container is made from a flexible material, after use, a user could remove container 12 from the remainder of the device and refill the container such that it returns to its original form. Although the container does not return to its original form during the operation of the device (as does the Applicant's device), such a limitation has not been claimed. The claims merely call for a container that is "capable" of returning to its original form and, as discussed supra, the Coombs container is certainly "capable" of doing so.

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
5/12/04